85-1042

No. ———

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

MARINE TRANSPORT LINES, INC.,
Petitioner,

v.

THE INTERNATIONAL ORGANIZATION OF MASTERS, MATES & PILOTS,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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QUESTIONS PRESENTED

1. Does the Norris-LaGuardia Act bar federal courts from enjoining multiple and vexatious lawsuits claiming statutory wage payment penalties under the Seamen's Act?

2. In an action claiming statutory penalties under the Seamen's Act, does the Norris-LaGuardia Act limit a federal court's inherent power under the All Writs Act to issue injunctions in aid of its jurisdiction?

3. Does Rule 52(a) of the Federal Rules of Civil Procedure prohibit a court of appeals from disregarding a finding of fact by a district court when that finding has not been held to be clearly erroneous?

PARTIES TO THE PROCEEDING

Petitioner, Marine Transport Lines, Inc. ("MTL") respectfully prays that a Writ of Certiorari be issued to review the judgment of the United States Court of Appeals for the Eleventh Circuit entered in this proceeding on September 17, 1985. Respondent is the International Organization of Masters, Mates & Pilots ("the MM&P"), formerly the collective bargaining representative for a portion of the employees of Marine Transport Lines, Inc.*

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* Pursuant to Rule 28.1 of the Rules of Supreme Court, Petitioner herein discloses the following subsidiaries and affiliates of Marine Transport Lines, Inc.: Marine Transport Management, Inc.; Oswego Shipping Corporation; Marine Bulk Carriers, Inc.; Marine Navigation Company, Inc.; Marine Chemical Trading, Inc.; Marine Chemical Steamship Company, Inc.; Marine Purchasing Corporation; TAKX-1 Corporation; Marine Navigation Sulphur Carriers, Inc.; Marine Personnel & Provision, Inc.; Oswego Trader (Delaware); Marine LNG I, Inc.; Marine LNG II, Inc.; Trinity Marine Builders, Inc.; Oswego Ethylene Carriers, Ltd.; Marine Interests Corporation; Marine Transport Lines (UK) Ltd.; Nytoncrest Ltd.; Marine Alaska, Inc.; Marine San Diego, Inc.; Marine Chemical Carriers Corporation; Marine Coal Transport Corporation; Marine Sulphur Shipping Corporation; Marine Sulphur Carriers Corporation; Marine Chemical Navigation Corporation; Trinity Marine Corporation; MTL Bulkships, Inc.; Oswego Steamship Corporation; Oswego Cleveland Corporation; Oswego Tanker Corporation; Marine Petroleum Carriers, Inc.; Oswego Unity Corporation; MTL Petroleum Carriers, Inc.; Oswego Transferee Corporation, S.A.; Enterprise Shipping Corporation; Trinity Navigation Corporation; Oswego Corporation; Oswego Chartering Corporation; Oswego Operations I Corporation; Oswego Shipbuilding Corporation; Oswego Merchant Corporation; Oswego Erie Corporation; Oswego Prima Corporation; Oswego Operations II Corporation; Oswego Operations VI Corporation; Oswego Chemical Carriers Corporation; and Hanover Marine Carriers.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

CITATION OF OPINIONS BELOW

The Opinion of the Court of Appeals for the Eleventh Circuit has been reported at 770 F.2d 1526 (11th Cir. 1985) and is included within the Appendix for Petitioner submitted herein, commencing at page 1a. The Order of the United States District Court for the Middle District of Florida, granting the preliminary injunction at issue, has not been reported, but appears in the Appendix for Petitioner, commencing at page 8a.

JURISDICTION

The judgment of the Court of Appeals was entered on September 17, 1985 (Appendix for Petitioner at p. 13a).

A Petition for Rehearing by Marine Transport Lines was denied by the Court of Appeals on November 5, 1985 (Appendix for Petitioner at p. 15a). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 1651, as amended, Chapter 139, § 90, May 24, 1949, 63 Stat. 102:

> The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

29 U.S.C. § 101, Pub. L. 72-65, Chapter 90, § 1, March 23, 1932, 47 Stat. 70:

> No court of the United States, as defined in this chapter, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in strict conformity with the provisions of this chapter; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this chapter.

29 U.S.C. § 104(d), Pub. L. 72-65, Chapter 90, § 4, March 23, 1932, 47 Stat. 70:

> No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts: . . .
>
> (d) By all lawful means aiding any person participating in or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State . . . .

29 U.S.C. § 113(c), Pub. L. 72-65, Chapter 90, § 13, March 23, 1932, 47 Stat. 73:

> The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

46 U.S.C. § 10313(f) and (g), Pub. L. 98-89, August 26, 1983, 97 Stat. 566:

> (f) At the end of a voyage, the master shall pay each seaman the balance of wages due the seaman within 24 hours after the cargo has been discharged or within 4 days after the seaman is discharged, whichever is earlier. When a seaman is discharged and final payment of wages is delayed for the period permitted by this subsection, the seaman is entitled at the time of discharge to one-third of the wages due the seaman.
>
> (g) When payment is not made as provided under subsection (f) of this section without sufficient cause, the master or owner shall pay to the seaman 2 days' wages for each day payment is delayed.

46 U.S.C. § 10504(b) and (c), Pub. L. 98-89, August 26, 1983, 97 Stat. 570 *repealed*, Pub. L. 99-36, May 15, 1985, 99 Stat. 67:

> (b) The master shall pay a seaman the balance of wages due the seaman within 2 days after the termination of the agreement required by section 10502 of this title or when the seaman is discharged, whichever is earlier.
>
> (c) When payment is not made as provided under subsection (b) of this section without sufficient cause, the master or owner shall pay the seaman 2 days' wages for each day payment is delayed.

STATEMENT OF THE CASE

The Court of Appeals decision below involves the significant federal question of whether the Norris-LaGuardia Act bars federal courts from enjoining the initiation of multiple lawsuits between the same parties, involving identical issues. The Court of Appeals reviewed and vacated an interlocutory preliminary injunction granted by the United States District Court for the Middle District of Florida on September 14, 1984, restraining the MM&P from filing duplicative, statutory wage claims under the Seamen's Act, 46 U.S.C. §§ 10313(g), 10504(c) (1984 supp.), while those same claims were pending before the District Court.

The parties to this action were parties to a collective bargaining agreement which expired June 15, 1984. That agreement covered a unit of supervisory employees who served as licensed deck officers on board seagoing vessels operated by MTL. On June 15, 1983, the parties agreed in a written Memorandum of Understanding to the indefinite deferral of a 7½ percent wage increase that would have otherwise been effective June 16, 1983. The Memorandum provided that the MM&P would retain the right to reinstitute unilaterally that deferred increase at any time. On or about June 8, 1984, the MM&P notified MTL of its intention to reinstitute that increase, but it did not make specific demand for payment at any particular time.

When MTL received notice of the MM&P's desire to reinstitute the deferred wage increases, MTL began the calculations needed to make the required, retroactive payments. Before this process could be completed, however, the MM&P began collecting wage assignments from its members and precipitated the filing of two actions against MTL seeking to recover statutory penalties under Seamen's Act, 46 U.S.C. §§ 10313(g), 10504(c), with respect to the deferred wage increases. The Seamen's Act imposes statutory penalties on employers who fail to pay wages due and owing at the completion of a voyage. *See*

46 U.S.C. §§ 10313(g), 10504(c).[1] The actions initiated by the MM&P sought not only these statutory penalties, but also the immediate arrest of MTL vessels as security for their claims. *See* Supplemental Rules for Certain Admiralty and Maritime Claims, Rule C (1985) (allowing arrests).

Faced with the prospect of a continuing series of these arrest actions, petitioner filed this action seeking a declaration that the contractual wages had been paid, and that, as a matter of law, no penalties were incurred under the Seamen's Act on these facts. The District Court has not decided the merits of any of these actions, although summary judgment motions are pending in each.

The Order from which the MM&P appealed to the Eleventh Circuit was a preliminary injunction sought by MTL to protect against a multiplicity of arrest actions under the Admiralty Rules of Court. MTL voluntarily submitted to the jurisdiction of the district court for a determination whether any of the wage claims that had been assigned to the union could support the penalty wages sought under the Seamen's Act. After hearing, the District Court granted a temporary restraining order on September 4, 1984, and set the matter for an evidentiary hearing on MTL's request for a preliminary injunction on September 6, 1984.

After hearing on petitioner's motion for preliminary injunction, the District Court found that the supervisory employees represented by the MM&P had assigned their claims to the MM&P. The court received evidence that the MM&P was using its counsel to bring a multiplicity

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[1] As of May 15, 1985, 46 U.S.C. § 10504 was repealed retroactively. *See* Pub.L. No. 99-36, 99 Stat. 67 (1985). As a consequence, the wage penalty provisions of the Seamen's Act no longer apply to coastwise voyages (i.e., voyages from one point in the United States to another point in the United States).

of actions, all seeking the same wages and penalties as those at issue before the District Court. The evidence also established that the MM&P intended to continue its pattern of duplicative litigation with respect to the wage penalty claims.

Most important for present purposes, however, was the District Court's finding that there was no dispute between the parties as to the terms and conditions of employment applicable to MM&P members employed by MTL. From this finding, it is clear that the only dispute below concerned the rights and obligations of the parties under the Seamen's Act.

On this evidence, the District Court granted MTL's motion for preliminary injunction. The narrowly drawn Order prohibited the MM&P from filing additional arrest actions in any other court asserting claims already before the District Court below. (Appendix pp. 11a-12a). The Order neither prevented the MM&P from assisting any individual member from prosecuting a claim, nor interfered with members' rights to file grievances and seek arbitration over any claims for unpaid wages due under the collective bargaining agreement.

The MM&P appealed the District Court's Order to the Eleventh Circuit. On October 17, 1985, in an opinion by Chief Judge Godbold, the Court of Appeals reversed and vacated the District Court's Order. The Court of Appeals ignored the District Court's finding that there was no dispute over the contractual terms and conditions of employment and held that the injunction was prohibited by the Norris-LaGuardia Act because the case grew out of a dispute over those terms and conditions of employment. Accordingly, the Court of Appeals held that the District Court had no jurisdiction to issue an injunction to prohibit litigation in other courts of the same claims pending before that court.

REASONS FOR GRANTING THE WRIT

A. Introduction.

This case raises important issues concerning the interpretation and accommodation of federal statutes affecting the jurisdiction of the courts of the United States. If the decision of the Court of Appeals below is permitted to stand, MTL respectfully submits that it will restrict the district courts' ability to control the litigants before them and will permit a proliferation of actions in cases where a single court has jurisdiction to afford complete relief. Moreover, Congress never intended to place on the courts the restrictions imposed by the court's opinion below. MTL respectfully submits that there are three reasons for granting the Writ.

First, the decision of the United States Court of Appeals for the Eleventh Circuit gives an overly broad interpretation to the anti-injunction provisions of the Norris-LaGuardia Act, 29 U.S.C. § 101 *et seq.* (1973), and, in so doing, leaves federal courts without jurisdiction to enjoin harassing, repetitive litigation in all controversies that even tangentially involve "terms or conditions of employment." *Marine Transport Lines, Inc. v. International Organization of Masters, Mates & Pilots*, 770 F.2d, 1526, 1529 (11th Cir. 1985) (Appendix at p. 4a). This decision represents an unnecessary limitation on the inherent power of the federal courts that will undoubtedly increase the workload of an already overburdened judicial system.

Second, this case also presents an important question of statutory interpretation under the federal labor laws. In interpreting the Norris-LaGuardia Act, this Court has recognized that it is appropriate to accomodate the Act to the polices behind other "ostensibly inconsistent" federal states. *See Boys Markets, Inc. v. Retail Clerk's Union, Local 770*, 398 U.S. 235, 250-51 (1970). In the instant case, the Eleventh Circuit failed to consider that the All Writs Act, 29 U.S.C. § 1651(a), specifically em-

powered the District Court to issue the injunction that the Court of Appeals found to be prohibited by the Norris-LaGuardia Act. Moreover, the Court of Appeals ignored the fact that the injunction issued by the District Court was carefully tailored to avoid conflict with the policies underlying the Norris-LaGuardia Act.

Finally, the Eleventh Circuit misapprehended the factual setting of this case and failed to defer to the District Court's findings of fact. *See generally*, Fed. R. Civ. Proc. 52(a). Below, MTL argued that this case did not "involve or grow out of a labor dispute" within the meaning of the Norris-LaGuardia Act because the case turned on the rights and obligations of the parties under the Seamen's Act, 46 U.S.C. §§ 10313, 10504, a statute which creates rights that transcend the process of collective bargaining. *See generally U.S. Bulk Carriers, Inc. v. Arguelles*, 400 U.S. 351 (1971); *Central Contractors Ass'n v. Local Union Number 46, Int'l Bhd. Elec. Workers*, 312 F. Supp. 1388, 1391 (W.D. Wash. 1969). The Eleventh Circuit rejected this argument, stating that this action involved a "controversy concerning terms or conditions of employment" *i.e.*, whether MTL was obligated to pay wages provided in a memorandum of understanding. *Marine Transport Lines v. International Organization of Masters, Mates & Pilots*, 770 F.2d at 1529. However, this statement is directly contrary to the District Court's finding, based on record testimony and proof of payment, that there was no dispute between the parties as to the applicable terms and conditions of employment of MM&P members employed by MTL. *See* Appendix at p. 9a. Thus, the Court of Appeals effectively rejected a finding of fact by the District Court without holding that finding to be clearly erroneous as required by Rule 52(a) of the Federal Rules of Civil Procedure.

Accordingly, this court should review the decision of the Eleventh Circuit and, upon review, reverse that decision.

B. The Eleventh Circuit's Decision Unduly Restricts District Courts From Controlling Their Dockets By Preventing Harassing And Duplicative Litigation Through The Exercise Of Jurisdiction Under The All Writs Act.

The All Writs Act, a successor to a statute originally enacted in 1789, empowers all federal courts "to issue all writs necessary or appropriate in aid of their respective jurisdictions. . . ." 28 U.S.C. § 1651(a). This statute has routinely been interpreted to grant federal courts the power to issue injunctions to maintain order in their dockets and to serve the strong public policy of protecting litigants from harassing and unwarranted litigation. *See Clinton v. United States*, 297 F.2d 899 (9th Cir. 1961), *cert. denied*, 369 U.S. 856 (1962); *In re Oliver*, 682 F.2d 443 (3rd Cir. 1982); *Harrelson v. United States*, 613 F.2d 114 (5th Cir. 1982). The Third Circuit has described a court's power under the All Writs Act as follows:

> It is well within the broad scope of the All Writs Act for a District Court to issue an order restricting the filing of meritless cases by a litigant whose manifold complaints raise claims identical or similar to those that already have been adjudicated. The interests of repose, finality of judgments, protection of defendants from unwarranted harassment, and concern for maintaining order in the courts' dockets have been deemed sufficient by a number of courts to warrant such a prohibition against relitigation of claims. In appropriate circumstances, courts have gone beyond prohibitions against relitigation and enjoined persons from filing any further claims of any sort without permission of the court.

In re Oliver, 682 F.2d at 445 (citations omitted).

Precedent under the All Writs Act has established that a litigant can be enjoined from filing additional actions in the following circumstances:

1. Where the litigant has engaged in a pattern of vexatious and harassing litigation, inflicting needless expense upon the other parties;
2. Where the litigation has imposed a burden on the federal court system; and
3. Where it appears that the pattern of vexatious litigation will continue, unless it is enjoined.

See Matter of Hartford Tile Corp., 682 F.2d 895, 897 (2d Cir. 1982), *cert. denied*, 459 U.S. 1206 (1983). In short, a court's power under the All Writs Act can be used to prohibit litigants from engaging in "wars of attrition" by bringing similar causes of action against their opponents in numerous jurisdictions. *See Laker Airways Ltd. v. Sabena*, 731 F.2d 909, 928 (D.C. Cir. 1984).

Petitioner Marine Transport Lines commenced this action in the District Court to defend itself against precisely this type of war of attrition. On August 22, 1984, the MM&P, acting pursuant to wage assignments from its members, filed an action in the Middle District of Florida claiming statutory wage penalties under the Seamen's Act, 46 U.S.C. §§ 10313, 10504, and seeking the arrest of an MTL vessel as security for its claims. *See Stuart v. Steamship M/V Marine Duval*, No. 84-1136-CIV-T-17 (M.D. Fla. 1984). Within hours, the MM&P instituted an identical action in Houston, using claims assigned by different members. *See Dunham v. Steamship Marine Chemist*, No. H-84-3548 (S.D. Tex. 1984). Although the MM&P was not the named plaintiff in either case, the District Court below received evidence that the MM&P had in fact initiated these actions.

Faced with the prospect of a continuing series of arrest actions in the various ports where MTL vessels call, the Petitioner filed the action below to secure a single determination of the rights and obligations of the parties under the Seamen's Act. To provide the District Court with an

opportunity to decide these issues and to prevent further harassment, MTL also sought an injunction prohibiting the MM&P from bringing further arrest actions in a multiplicity of courts, pending a decision by the District Court below. At that time, MM&P counsel advised the District Court that approximately 135 assignments had been obtained to authorize additional suits and that further actions might be filed in ports around the country. In opposing MTL's request for injunctive relief, the MM&P failed to offer any reason why the claims below could not be fully adjudicated in this action without the filing of additional arrest actions across the country, presenting identical substantive claims.

On September 14, 1984, the District Court granted MTL's request for preliminary relief. In pertinent part the court's order provided:

> Defendant, THE INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS is hereby enjoined pending final resolution of this action, *from filing additional actions in other courts involving claims which are presently cognizable before this Court between the parties in this case.*
>
> Defendant is further enjoined from instituting additional arrests of Plaintiff's vessels in support of any such claims.

See Appendix at p. 11a-12a (emphasis added). This order was carefully tailored to prevent the MM&P from continuing its pattern of vexatious lawsuits and arrests, while preserving the union's right to perform its representative function. Even after the injunction was entered, the MM&P was free to file additional actions in the District Court below and to render assistance in actions filed by individual MM&P members in any court in America. The injunction merely prohibited the MM&P from filing identical actions in various courts across the United States.

The injunction granted by the District Court was clearly justified by existing precedent under the All Writs

Act. The MM&P had affirmatively demonstrated its intention to harass MTL by filing identical arrest actions in two ports and by announcing its plans to take similar action over the same issue wherever MTL vessels might call. Moreover, the MM&P never offered a legitimate justification for this pattern of litigation, which imposed substantial costs upon MTL.[2] Finally, there was evidence before the District Court which supported the conclusion that, absent an injunction, the MM&P would have continued its pattern of filing arrest actions, thus burdening the federal court system.[3]

In short, the injunction entered by the District Court was an important, necessary and legitimate exercise of that court's power under the All Writs Act. By vacating this injunction, the Eleventh Circuit has established a precedent that could lead to the proliferation of duplicative litiagtion and the evisceration of the power of the federal courts to control their dockets.

C. The Norris-LaGuardia Act Does Not Limit A District Court's Jurisdiction To Enjoin Duplicative And Harassing Litigation.

The Norris-LaGuardia Act provides that "No court of the United States . . . shall have jurisdiction to issue

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[2] For example, the MM&P secured the arrest of an MTL vessel in the action entitled *Stuart v. Steamship M/V Marine Duval*, No. 84-1136-CIV-T-17 (M.D. Fla. 1984) and the arrest of another MTL vessel in the action entitled *Dunham v. Steamship Marine Chemist*, No. H-84-3548 (S.D. Tex. 1984). In each case the plaintiff sought a bond of several million dollars to secure the statutory wage penalty claims. These vessels were released only after MTL posted bonds of $55,000 and $200,000, respectively.

[3] Many of the reported cases involving injunctions against the filing of additional lawsuits present factual patterns in which the litigants have filed large numbers of actions. *See, e.g., In Re Martin-Trigona*, 737 F.2d 1254 (2d Cir. 1984). However, at least one Court of Appeals has clearly indicated that a district court need not wait until a litigant "inundates each federal court" before it grants injunctive relief. *Id.* at 1262.

any temporary restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute . . . ." 29 U.S.C. § 101. A "labor dispute" is defined to include "any controversy concerning terms or conditions of employment. . . ." 29 U.S.C. § 113(c). In interpreting this language this Court has held that it is appropriate to consider not only the policies behind the Norris-LaGuardia Act, but also the policies of statutory provisions that are "ostensibly inconsistent" with the Norris-LaGuardia Act. *Boys Market, Inc. v. Retail Clerk's Union, Local 770*, 398 U.S. at 250; *see also, United States v. United Mine Workers of America*, 330 U.S. 258, 309 (1947) (Frankfurter, J. concurring).

In reversing the decision of the District Court, the Eleventh Circuit rendered a rigid interpretation of the Norris-LaGuardia Act, merely asserting that the District Court's injunction was invalid because the underlying dispute concerned the terms and conditions of employment of MTL employees. The Court of Appeals refused to address the "ostensible inconsistency" between the District Court's power under the All Writs Act and the limitations on jurisdiction contained in the Norris-LaGuardia Act. The Eleventh Circuit also refused to consider whether a proper accommodation could be made between the rationale underlying the District Court's injunction and the policies behind the Norris-LaGuardia Act. *See Drywall Tapers & Pointers of Greater New York v. Operative Plasterers' and Cement Masons' Int'l Ass'n*, 537 F.2d 669, 674 (2d Cir. 1976) (injunction proper because it "did not interfere with the policies behind the Norris-LaGuardia Act"). The Eleventh Circuit's refusal to consider these matters is directly contrary to the decisions of this Court and other federal courts.

For example, in *United States v. United Mine Workers of America*, 330 U.S. 258 (1947), this Court had occasion to consider a conflict between the inherent power of federal courts to issue injunctions in aid of their juris-

diction and the anti-injunction provisions of the Norris-LaGuardia Act. That case arose during the period when the United States Government was operating a portion of the bituminous coal industry as part of the war effort. *Id.* at 262. In late 1946, John L. Lewis, the President of the United Mine Workers of America ("UMWA"), purported to terminate unilaterally the collective bargaining agreement between the United States and the UMWA. *Id.* at 264-65. The United States brought an action in federal court seeking a declaration that Lewis could not unilaterally terminate the contract and an injunction against any strike by the UMWA. *Id.* at 266.

The district court issued a temporary restraining order which Lewis and the UMWA promptly ignored by engaging in a work stoppage. *Id.* at 266-67. The United States then filed a contempt action against both Lewis and the union. In defending against the contempt action, Lewis and the UMWA contended that they were free to ignore the injunction because the Norris-LaGuardia Act deprived the district court of jurisdiction to issue "a temporary restraining order . . . in a case involving or growing out of a labor dispute. . . ." 29 U.S.C. § 101. In response, the United States argued that the Norris-LaGuardia Act did not apply to the government in its role as sovereign. The district court adopted the government's position and convicted Lewis and the union of contempt. *Id.* at 268.

The contempt conviction eventually reached the Supreme Court and was affirmed, with Justice Frankfurter providing the decisive vote in a separate concurrence. Justice Frankfurter began his concurrence by asserting that a district court has the inherent power:

> to preserve the existing conditions in the discharge of its duty to permit argument and to take the time for such consideration as it might need . . .

Id. at 311 (Frankfurter, J. concurring) (citations omitted). Justice Frankfurter then concluded that, even though the temporary restraining order against the

UMWA fell within the literal language of the Norris-LaGuardia Act, the district court retained its authority to make appropriate orders so as to afford the necessary time for fair consideration and decision, while existing conditions were preserved. *Id.* at 311-312. In short, this Court concluded that the literal language of the Norris-LaGuardia Act had to be accommodated to a district court's authority to issue an injunction in aid of its jurisdiction. *See also Retail Clerk's Union Local 1222 v. Alfred M. Lewis, Inc.*, 327 F.2d 442, 445 (9th Cir. 1964) ("If the union is prosecuting an action [for wages under the collective bargaining agreement], we presume that the court's power would extend to the prevention of separate lawsuits by individual members, to obtain the same result.").

The rationale of Justice Frankfurter's concurrence is equally applicable to the instant case. As in *United States v. UMWA*, the District Court below issued a narrow injunction that was designed solely to give the federal judicial system an opportunity to perform its function with respect to the claims of the MM&P in an efficient and consistent manner. Without the injunction, a number of district courts throughout the United States would have been confronted with identical cases, creating the risk of a "race to judgment" and the potential for inconsistent decisions. In light of this Court's decision in *United States v. UMWA*, the Eleventh Circuit erred by failing even to consider the ostensible conflict between the District Court's inherent power under the All Writs Act and the anti-injunction provisions of the Norris-LaGuardia Act.

The Eleventh Circuit's interpretation of the Norris-LaGuardia Act was also defective in that it failed to consider that the injunctive relief granted below did not interfere with the policies behind the Norris-LaGuardia Act. As this Court has recognized, the Norris-LaGuardia Act was enacted:

> to correct the abuses that had resulted from the interjection of the federal judiciary into union-management disputes on the behalf of management.

Boys Markets v. Retail Clerks' [illegible] 398 U.S. at 251. In particular, Congress was con[illegible]that courts not use their equitable powers to limit the right of employees to engage in "concerted activities." *See* 29 U.S.C. § 102 (statement of policy of the Norris-LaGuardia Act). With this purpose in mind, Congress enumerated certain forms of economic action that could not be enjoined by a federal court. *See* 29 U.S.C. § 104.

A review of the activities enumerated in Section 104 of the Norris-LaGuardia Act confirms that Congress intended to protect traditional forms of concerted activity by unions and their members. Section 104 lists such activities as engaging in strikes, becoming a union member, picketing in support of a labor dispute and providing information concerning a labor dispute. 29 U.S.C. § 104. Nothing in the language or legislative history of the Norris-LaGuardia Act indicates that Congress intended to deprive courts of their inherent power to issue writs and orders necessary to the efficient performance of the judicial function. *See generally*, Frankfurter and Green, *The Labor Injunction* (1930).

The injunction issued by the District Court below in no way interfered with activities protected by the Norris-LaGuardia Act. The injunction avoided any interference with the substantive rights of MM&P members and the MM&P's ability to perform its representative function. The injunction did not limit the right of individual members to file actions against MTL. In addition, the injunction preserved the MM&P's right to render assistance to individual members prosecuting such actions against MTL. Finally, the injunction recognized the MM&P's right to file additional actions on its own behalf against

MTL, provided that those actions were filed in the District Court below.[4]

This Court has held that the Norris-LaGuardia Act should not be interpreted so as to undermine equally compelling policies reflected in other federal statutes. *See Textile Workers Union v. Lincoln Mills*, 353 U.S. 448, 457-58 (1957); *see also National Ass'n of Letter Carriers v. Sombrotto*, 449 F.2d 915, 919 (2d Cir. 1971) (reluctance to allow literal reading of Norris-LaGuardia Act draws support from *Boys Markets*). By failing to consider the nature of injunction issued by the District Court below and the type of activity that the Norris-LaGuardia Act was intended to protect, the Eleventh Circuit rendered an overly broad interpretation of the Act. That interpretation is not consistent with existing precedent and it extends the anti-injunction provisions of the Norris-LaGuardia Act beyond any reasonable reading of the language or purpose of the statute.

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[4] Section 104(d) of the Norris-LaGuardia Act provides that the following activity cannot be enjoined:

> By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against or is prosecuting, any action or suit in any court of the United States or of any State . . . .

29 U.S.C. § 104(d). The injunction issued by the District Court below does not fall within the literal language of Section 104(d). Nothing in the injunction prohibits the MM&P from aiding its members in the prosecution or defense of actions. In addition, the injunction preserves the MM&P's right to prosecute actions on behalf of its members, provided that such actions are filed in the District Court below.

D. In Concluding That This Action Involves Or Grows Out Of A Labor Dispute Within The Meaning Of The Norris-LaGuardia Act, The Eleventh Circuit Improperly Ignored Findings Of Fact Made By The District Court.

After conducting a hearing on MTL's request for a preliminary injunction, the District Court below issued findings of fact and conclusions of law to support its order granting preliminary injunctive relief. *See* Rule 52, Fed. R. Civ. Proc. (requiring findings of fact and conclusions of law to support an interlocutory injunction). In its findings of fact, the District Court specifically concluded that there was no dispute between the parties as to the terms and conditions of employment applicable to MM&P members employed by MTL. In pertinent part, the District Court's opinion stated:

> The evidence at the hearing on Plaintiff's motion for preliminary injunction indicated to this Court that there is *no* dispute between the parties that the 7½ percent wage increase is due, and entitlement to a cost-of-living allowance is *not* disputed either.

Appendix at page 9a (emphasis in original).[5] Based upon this finding of fact, the District Court concluded that case did not involve or grow out of a labor dispute within the meaning of the Norris-LaGuardia Act. Therefore, the court found no bar to the issuance of injunctive relief. *See Appendix* at pp. 9a-10a.[6]

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[5] To date, the MM&P has not asserted that there was a dispute between the parties over any term or condition of employment other than the 7½ percent wage increase and the cost-of-living allowance.

[6] The District Court did set forth a rather novel theory that this case was actually a dispute over a "debt owed by Plaintiff and assigned to Defendant." Appendix at p. 10a. Petitioner did not attempt to defend this theory in the Court of Appeals and does not do so now. However, this "debt theory" does not affect the validity of either the District Court's factual finding that there was no dispute between the parties as to the applicable terms and conditions

The District Court's factual finding that there was no dispute between the parties as to the applicable terms and conditions of employment is crucial to the question of whether the instant case involves or grows out of a labor dispute within the meaning of the Norris-LaGuardia Act. Given this factual finding, the only controversy remaining between the parties concerns whether the double wage penalty provided in the Seamen's Act, 46 U.S.C. §§ 10313, 10504 (1985), applies to wages deferred by mutual agreement of the parties. *See id.* §§ 10313(g), 10505(c).

This Court has previously held that an employee's rights under the Seamen's Act are statutory rights that are completely distinct from and transcend the process of collective bargaining. *See U.S. Bulk Carriers, Inc. v. Arguelles*, 400 U.S. 351 (1971). In *Arguelles*, a seaman was working under terms and conditions of employment established by a collective bargaining agreement. That agreement contained a mandatory grievance and arbitration procedure. As a result of a dispute between the seaman and his employer, the seaman filed an action in federal court seeking statutory wages and penalties under the Seamen's Act. The employer moved to dismiss the Seamen's Act claim on the theory that the grievance and arbitration procedure set forth in the collective bargaining agreement was the seaman's exclusive remedy with respect to wage claims. In rejecting the employer's argument, this Court held that an employee's rights under the Seamen's Act are separate and distinct from entitlements created by collective bargaining agreements. 400 U.S. at 357; *see also Barrentine v. Arkansas-Best Freight System*, 450 U.S. 728 (1981) (statutory right to overtime wages distinct from similar right under

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of employment or its legal conclusion that this action did not involve or grow out of a labor dispute. *See Boag v. MacDougall*, 454 U.S. 364, 367 (1982) (district court should be affirmed if there is some grounds in the record to support affirmance).

collective bargaining agreement); *Alexander v. Gardner Denver Co.*, 415 U.S. 36 (1974) (indicating that statutory rights under Title VII are distinct from rights created by a collective bargaining agreement).

Moreover, numerous federal courts have recognized that, even in the context of a Norris-LaGuardia Act labor dispute, injunctive relief may be appropriate in an action involving statutory rights that transcend the process of collective bargaining. For example, in *Central Contractors Ass'n. v. Local Union No. 46, Int'l Bhd. Elec. Workers*, 312 F. Supp. 1388 (W.D. Wash. 1969), certain construction contractors were forced to increase minority hiring in response to community pressure. *Id.* at 1390. In protest, the defendant unions engaged in a work stoppage. *Id.* Subsequently, the minority employees sought a preliminary injunction against the union's work stoppage on the theory that the work stoppage violated the minority employees' rights under 42 U.S.C. § 1981 (1981).

Given that the defendant unions were on strike to protest the contractors' decision to hire additional minorities, there can be little doubt that the defendant unions and the contractors were involved in a "labor dispute" within the meaning of the Norris-LaGuardia Act. *See New Negro Alliance v. Sanitary Grocery Co.*, 303 U.S. 552 (1938) (picketing by a civic group designed to force employer to change racial composition of its workforce is a labor dispute). Despite this fact, the court enjoined the work stoppage by the defendant unions, stating that the NorrisLaGuardia Act was inapplicable because the plaintiffs' section 1981 action was:

> bottomed upon alleged acts of discrimination which transcend the collective bargaining rights which arise out of the labor contracts of defendants.

Central Contractors Ass'n. v. Local Union No. 46, 312 F. Supp. at 1391; *see also Bowe v. Judson C. Burns, Inc.*,

46 F. Supp. 745 (E.D. Pa. 1942), *aff'd*, 137 F.2d 32 (3d Cir. 1943) (action under Fair Labor Standards Act); *State of Washington v. Baugh Constr. Co.*, 313 F. Supp. 598 (W.D. Wash. 1969).

In its decision in this case, the Eleventh Circuit accepted the proposition that an action based on statutory rights unrelated to collective bargaining does not "involve or grow out of a labor dispute" within the meaning of the Norris-LaGuardia Act. *See Marine Transport Lines, Inc. v. International Organization Of Masters, Mates & Pilots*, 770 F.2d at 1529 n.2. The Court of Appeals, however, distinguished the precedents relied upon by MTL by concluding that this case involved a controversy between MTL and the MM&P with respect to "terms and conditions of employment." *Id.* This conclusion, however, is directly contrary to the District Court's factual finding that there was no dispute between the parties with respect to the terms and conditions of employment applicable to MM&P members employed by MTL.

A district court's factual findings in support of a preliminary injunction can be reversed by a court of appeals only if those findings are "clearly erroneous." *See* Fed. R. Civ. P. 52(a); *see generally Anderson v. City of Bessemer City, North Carolina*, —— U.S. ——, 105 S.Ct. 1504, 85 L.E.2d 518 (1985). This standard of review applies equally to factual findings relevant to a determination of the applicability of the Norris-LaGuardia Act. *See Chief Freight Lines Co. v. Local Union No. 886, Int'l. Bhd. of Teamsters*, 514 F.2d 572, 578-79 (10th Cir. 1975). In the instant case, the Eleventh Circuit reversed a factual finding of the District Court without offering a single shred of support for the conclusion that the factual finding was clearly erroneous within the meaning of Rule 52(a). As such, this Court should grant a Writ of Certiorari to reverse the decision of the Eleventh Court.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that a Writ of Certiorari be issued to review the judgment of the Court of Appeals for the Eleventh Circuit in this case.

Respectfully submitted,

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APPENDIX

APPENDIX

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

Nos. 84-3673, 84-3764

MARINE TRANSPORT LINES, INC., ETC.,
Plaintiff-Appellee,

v.

THE INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, ETC.,
Defendant-Appellant.

DELTA STEAMSHIP LINES, INC.,
A Louisiana Corporation
Plaintiff-Appellee,

v.

INTERNATIONAL ORGANIZATION OF MASTERS, MATES & PILOTS, a Labor Organization,
Defendant-Appellant.

Sept. 17, 1985

Appeals from the United States District Court
for the Middle District of Florida

Before GODBOLD, Chief Judge, HATCHETT, Circuit Judge, and TUTTLE, Senior Circuit Judge.

GODBOLD, Chief Judge:

This is a consolidated appeal of two suits filed against the International Organization of Masters, Mates and Pilots ("MM&P"), which represents officers employed aboard vessels of U.S. flag carriers, by Marine Transport Lines, Inc., and Delta Steamship Lines, Inc., U.S. flag carriers of passengers and cargo. Both suits were filed in the Middle District of Florida but decided by different judges. In each action the district court entered a preliminary injunction enjoining MM & P from filing certain suits against, or arresting the vessels of, the ship lines. We find that the courts were without jurisdiction to enter the injunctions and vacate them.

I. Background

In June 1983 MM & P entered into separate Memoranda of Understandings with Delta and Marine Transport to amend the collective bargaining agreement it had with each line. Pursuant to these memoranda MM & P agreed to defer indefinitely a wage increase and cost of living allowance ("COLA") provided for by the collective bargaining agreements. In early June 1984 MM & P informed Delta and Marine Transport by letters that it was reinstituting the increases retroactively.

When Delta did not make payment by August 26, 1984 MM & P procured the arrest of a Delta vessel in an action filed in the names of its members. On August 29, 1984, when Marine Transport had not yet made payment, MM & P procured the arrest of two Marine Transport vessels in two further actions filed in the names of its members.[1] The complaints in these actions sought com-

[1] Appellees assert that MM & P members had assigned their rights to initiate these actions to MM & P and suggest that MM & P was the real party in interest. We need not decide this question.

pensation for the retroactive wage increase as well as penalty wages pursuant to the Seaman's Act. 46 U.S.C. §§ 10313, 10504.

In response, Marine Transport and Delta sued MM & P in separate actions. Each company sought declaratory relief with respect to its liability under both its collective bargaining agreement and the Seamen's Act. In addition, each company requested that MM & P and its members be enjoined from suing it for statutory wages or penalties and from arresting its vessels in connection with the wage claims.

In the Delta action, the district court granted Delta's motion for a preliminary injunction. After finding that Delta did not dispute that both the 7½% wage increase and the COLA were due and owing, the court determined that four requirements for the entry of injunctive relief were satisfied: a substantial likelihood that the movant will ultimately prevail on the merits; irreparable injury to the movant because of the unavailability of an adequate remedy at law; the potential harm to the movant outweighs possible damage to the adverse party; and the absence of disservice to the public interest should injunctive relief issue. Accordingly, pending final resolution of the action, it enjoined MM & P from "filing additional actions in other courts involving claims which are presently cognizable before this court between the parties in this case" and from instituting additional arrests of Delta's vessels in support of these claims. The order entering this preliminary injunction did not discuss the Norris-LaGuardia Act, 29 U.S.C. § 101 et seq.

In the Marine Transport action the court likewise found that there was no dispute that the 7½% wage increase and the COLA were due and that the same four requirements for injunctive relief were satisfied. It entered a preliminary injunction virtually identical to the one entered in the Delta action. In addition the court

found that the case was not a labor dispute because it was "essentially nothing more than a dispute over a debt owed by Plaintiff."

In two separate appeals, which have been consolidated, MM & P challenges the entry of both preliminary injunctions. Its principal contentions are: the injunctions are barred by § 104(d) of the Norris-LaGuardia Act, 29 U.S.C. § 104(d); the requirements of § 107 of the Act have not been satisfied; the injunctions are not supported by competent substantial evidence; the district courts' failure to observe the Federal Rules of Civil Procedure as well as the local court rules deprived MM & P of due process; and the suits of Delta and Marine Transport are preempted by the exclusive jurisdiction of the NLRB.

II. Discussion

We need only reach one of MM & P's contentions. Section 7 of the Norris-LaGuardia Act, 29 U.S.C. § 107, provides that no federal court has jurisdiction to issue an injunction "in any case involving or growing out of a labor dispute" except, among other things, after making certain findings of fact. One such required finding is

> (a) That unlawful acts have been threatened and will be committed unless restrained or have been comitted and will be continued unless restrained
> . . . .

29 U.S.C. § 107(a).

Under 29 U.S.C. § 113(c) the term "labor dispute" "includes any controversy concerning terms or conditions of employment." The term "must not be narrowly construed because the statutory definition itself its extremely broad . . . ." *Jacksonville Bulk Terminals, Inc. v. International Longshoremen's Association*, 457 U.S. 702, 102 S.Ct. 2672, 73 L.Ed.2d 327 (1982).

Despite the finding of the district court in the Marine Transport action below, this litigation presents a "con-

troversy concerning terms or conditions of employment." It is undisputed that the initial suits filed against Marine Transport and Delta sought to secure the payment of a wage increase and COLA (and penalty wages under the Seamen's Act) pursuant to Memoranda of Understanding amending the respective collective bargaining agreements. The present actions by the two shipping lines, in turn, seek declaratory relief with respect to these claims and the claims for penalty wages, as well as the injunction of MM & P from filing suits seeking statutory wages or penalties and from arresting the lines' vessels in connection with these wage claims. Just as payments to employee benefit funds which a collective bargaining agreement obligated the employer to make are "terms and conditions of employment," *Crowe & Associates Inc. v. Bricklayers and Masons Union*, 713 F.2d 211, 213 (6th Cir.1983), *In re Petrusch*, 667 F.2d 297, 299 (2d Cir.), *cert. denied*, 456 U.S. 974, 102 S.Ct. 2238, 72 L.Ed.2d 848 (1982), so too are the wage increase and COLA here.

Moreover, a "controversy concerning a term or condition of employment" need not concern whether to create such a term but can simply concern the enforcement of an extant term. *See Crowe*, 713 F.2d at 213 (employer failed to make payments required under collective bargaining agreement); *In re Petrusch*, 667 F.2d at 299 (same).[2]

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[2] *Bowe v. Judson C. Burns, Inc.*, 46 F.Supp. 745 (E.D.Pa.1942), is not to the contrary. The underlying dispute in *Bowe* concerned whether employees had worked overtime without the compensation required under the Fair Labor Standards Act of 1938, 29 U.S.C. § 201 et seq. The court found no controversy "concerning terms or conditions of employment" because the case was not one in which "the employees demanded a higher rate of pay and were refused, or where the employer insisted upon a lower rate of pay." Instead the terms and conditions of employment were "fixed." *Id.* at 747.

Despite this language, *Bowe* did not turn on the fact that wages were already "fixed" rather than as yet unagreed upon. Instead, *Bowe* presented no labor dispute because the contract governing

Indeed a dispute is no less a controversy concerning a term of employment because it "may be resolved or determined on its merits by reference to the terms of a collective bargaining agreement," *United Electrical Radio and Machine Workers of America v. General Electric Co.*, 233 F.2d 85, 90-91 (1st Cir.1956), *aff'd on other grounds*, 353 U.S. 547, 77 S.Ct. 921, 1 L.Ed.2d 1028 (1957); *W.L. Mead, Inc. v. Int'l Brotherhood of Teamsters*, 217 F.2d 6, 8 (1st Cir.1954), or because a court has decided the dispute by way of a declaratory judgment (which one party has refused to obey). *Alcoa S.S. Co. v. McMahon*, 173 F.2d 567, 568 (2d Cir.1949).

Thus, this is a case "involving or growing out of a labor dispute." *See* 29 U.S.C. § 113(a).[3] Therefore, be-

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the employer-employee relationship was irrelevant to the controversy; the cause of action was created by statute irrespective of any contractual provision. Thus, it is analogous to *Washington v. Baugh Construction Co.*, 313 F.Supp. 598, 605 (W.D.Wash.1969) and *Central Contractors Ass'n v. International Brotherhood of Electrical Workers*, 312 F.Supp. 1388, 1391 (W.D.Wash.1969), in which the court found no "labor dispute" where the controversy was "bottomed upon alleged acts of discrimination which are prohibited by federal law and which transcend the collective bargaining rights which arise out of the labor contracts of defendant unions." *Baugh*, 313 F.Supp. at 605.

[3] While 29 U.S.C. § 113(c) simply defines "labor dispute," 29 U.S.C. § 113(a) states that a case shall be held "to involve or to grow out of" a labor dispute

> when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization or employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or

fore the district courts had jurisdiction to enter the injunctions, under § 107(a) they were required to find, among other things, that "unlawful facts" have been threatened or committed. 29 U.S.C. § 107(a). Such "unlawful acts" include violence, intimidation, threats, vandalism, breaches of the peace and criminal acts, *see Scott v. Moore*, 680 F.2d 979, 986 (5th Cir.1982) (former 5th Cir.) (en banc), *rev'd on other grounds*, 463 U.S. 825, 103 S.Ct. 3352, 77 L.Ed.2d 1049 (1983); *Brotherhood of Railroad Trainmen v. Central of Georgia Railway Comp.*, 229 F.2d 901, 905 (5th Cir.1956); *Wilson & Co. v. Birl*, 105 F.2d 948, 952 (3d Cir.1939), but do not include violation of Bankruptcy Reform Act's prohibition of the collection of a pre-commencement debt. *In re Crowe & Associates, Inc.*, 713 F.2d 211, 214 (6th Cir.1983). Because the courts made no such findings the injunctions were entered without jurisdiction.

Accordingly the preliminary injunctions are VACATED and the cases REMANDED to the respective district courts.

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when the case involves any conflicting or competing interests in a "labor dispute" (as defined in this section or "persons participating or interested" therein (as defined in this section).

Having determined that this case presents a "labor dispute" under § 113(c), we find that § 113(a) is also satisfied.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

Case No.: 84-1165-Civ-T-17

MARINE TRANSPORT LINES, INC.,
Plaintiff(s),

VS.

THE INTERNATIONAL ORGANIZATION OF
MASTERS, MATES AND PILOTS,
Defendant(s),

ORDER GRANTING PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

This cause is before the Court on a motion for preliminary injunction filed by Plaintiff, MARINE TRANSPORT LINES, INC. The facts of this case are as follows:

Plaintiff filed a complaint requesting a declaratory judgment pursuant to 28 USC § 2201 on August 29, 1984.

Plaintiff and Defendant entered into a collective bargaining agreement on June 16, 1981; the agreement expired June 15, 1984. The agreement called for a wage increase of 7½ percent effective June 16, 1983; however, the parties indefinitely deferred that increase by separate agreement on August 1, 1983. Pursuant to a Memorandum of Understanding the Defendant could retroactively and unilaterally re-instate the wage increase at any time. The collective bargaining agreement also called for an increase in the cost of living allowance for licensed deck officers effective June 1983. This increase was also frozen and deferred by the parties.

On June 15, 1984, the Defendant unilaterally re-instated the wage and living allowance increases provided for in the collective bargaining agreement. The Defendant did not impose any deadline nor indicate specific entitlements under the re-instatement. The evidence before this Court indicated that in past practice between these parties, the calculations for re-instatements have been made at Plaintiff's headquarters as well as payment for these re-instatements. This is contrary to 46 USC § 596. The evidence also indicated that previous re-instatements have taken several months.

Defendant has filed wage penalty suits resulting in the arrest of two of Plaintiff's ships, THE MARINE CHEMIST, and MARINE DUVAL, in Houston and Tampa respectively. Defendant has also instituted a law suit in the Southern District of New York to enforce the collective bargaining agreement.. Following the arrest of the MARINE CHEMIST, the Court set a bond of $200,000.00 for the vessel. Bond was set on the MARINE DUVAL in an amount of $55,000.00.

James Rand, President of Marine Transport Lines, Inc., testified at the hearing for the preliminary injunction that any additional arrests of Plaintiff's vessels would cause severe economic damage to Plaintiff, and, severe damage to Plaintiff's reputation and goodwill within its business operating community.

The evidence at the hearing on Plaintiff's motion for preliminary injunction indicated to this Court that there is *no* dispute between the parties that the 7½ percent wage increase is due, and entitlement to a cost of living allowance is *not* disputed either. Approximately 130 seamen assigned their rights to Defendant, who is an assignee.

The parties have addressed this case as a labor dispute. This Court believes the parties perception of the issues in this case are incorrect, and the case is *not* a labor dispute

at all. There is no issue that Plaintiff owes money to Defendant; Plaintiff has admitted it owes money. This Court finds upon review of the evidence presented, and consideration of the same, that *this case is essentially nothing more than a dispute over a debt owed by Plaintiff and assigned to Defendant.* The fact that the debt is owed is *not* at issue; the amount of the debt will ultimately be a question of fact for the fact finder. There is also no allegation nor evidence to rebutt Plaintiff's argument that Plaintiff is diligently attempting to compute the amount of wages owed to various seamen in this case.

Plaintiff, through its complaint, requests that this Court issue a declaratory judgment that:

1. Plaintiff has satisfied its obligation to provide deferred compensation as required by the collective bargaining agreement;

2. The Defendant is not entitled to recovery of penalty wages;

3. Plaintiff prays for this Court to enjoin Defendant from instituting actions in other courts against vessels of Plaintiff wherein those actions would be seeking wages or penalties against Plaintiff under the collective bargaining agreement previously described;

4. Finally, Plaintiff requests that Defendant be enjoined from further arrest of Plaintiff's vessels in connection with wage claims brought in other courts for claims arising under the collective bargaining agreement previously described.

The requirements for entry of injunctive relief in this Court are:

1. A substantial likelihood of the movant's success on the merits;

2. Irreparable injury to the movant because of unavailability of an adequate remedy at law;

3. Threatened injury to the movant which outweighs possible damage to the opposing party; and

4. Absence of any disservice to the public interests should injunctive relief issue.

United States v. *Jefferson County*, 720 F.2d 1511 (11th Cir. 1983).

The issue in this case is not a labor dispute, as the Court has previously stated; this is simply an action by an assignee for recovery of an amount of money from a debtor. There is no proof that the debtor is not attempting to compute the amount owed, and, there is no proof that the debtor is not totally willing to pay the amounts owed following computation. There is no evidence before this Court that the Plaintiff will be unable to provide correct compensation to the Defendant/Assignee, and, at this time, there is no evidence that the Defendant is entitled to recovery of penalty wages.

A review of the evidence before this Court indicates this Court can provide relief to all assignors and other affected persons under the collective bargaining agreement with Plaintiff. The Court sees no utility in filing additional lawsuits in other courts thereby causing the arrest of the Plaintiff's vessels. The evidence before this Court indicates that Plaintiff will be seriously injured by additional arrests of its vessels, and, interstate commerce will also be impaired by additional arrests of Plaintiff's vessels.

Defendant has filed actions which are sufficient to allow a just resolution of all claims assigned to it under the collective bargaining agreement. Accordingly, Plaintiff's motion for preliminary injunction is GRANTED.

Defendant, THE INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, is hereby enjoined pending final resolution of this action, from filing additional actions in other courts involving claims

which are presently cognizable before this Court between the parties in this case.

Defendant is further enjoined from instituting additional arrests of Plaintiff's vessels in support of any such claims.

DONE AND ORDERED in Chambers, in Tampa, Florida, this 14th day of September, 1984.

/s/ Elizabeth A. Kovachevich
United States District Judge

Copies to:

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IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 84-3673

MARINE TRANSPORT LINES, INC.,
Plaintiff/Appellee,

v.

INTERNATIONAL ORGANIZATION OF
MASTERS, MATES AND PILOTS, ETC.,
Defendant/Appellant.

No. 84-3764

DELTA STEAMSHIP LINES, INC. a
Louisiana Corporation,
Plaintiff/Appellee,

v.

INTERNATIONAL ORGANIZATION OF
MASTERS, MATES AND PILOTS, ETC.,
Defendant/Appellant.

JUDGMENT

THESE CAUSES came on to be heard on the transcript of record from the U.S. District Court for the Middle District of Florida and were argued by counsel, on consideration whereof: it is now ORDERED AND ADJUDGED by this Court that the Orders of the District Court appealed from in these causes be, and the

same are hereby vacated, and that these causes be, and the same are hereby remanded to said District Court with instructions in accordance with the opinion of this Court.

It is further ORDERED that Plaintiffs/Appellees pay to Defendants/Appellants the cost on appeal to be taxed by the Clerk of this Court.

ENTERED FOR THE COURT: September 17, 1985.

By: Warren Godfrey
Deputy Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 84-3673

MARINE TRANSPORT LINES, INC., ETC.,
Plaintiff-Appellee,

versus

THE INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, ETC.,
Defendant-Appellant.

No. 84-3764

DELTA STEAMSHIP LINES, INC.,
a Louisiana Corporation,
Plaintiff-Appellee,

versus

INTERANATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, a labor organization,
Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida

[Filed Nov. 5, 1985]

Before GODBOLD, Chief Judge, HATCHETT, Circuit Judge and TUTTLE, Senior Circuit Judge.

PER CURIAM:

The petition for rehearing is DENIED and no member of this panel nor other judge in regular active service on the court having requested that the court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 26), the suggestion for rehearing en banc is DENIED.

ENTERED FOR THE COURT:

/s/ John Godbold
CHIEF JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 84-3673

MARINE TRANSPORT LINES, INC., ETC.,
Plaintiff-Appellee,

versus

THE INTERNATIONAL ORGANIZATION OF MASTERS,
MATES AND PILOTS, ETC.,
Defendant-Appellant.

No. 84-3764

DELTA STEAMSHIP LINES, INC.,
a Louisiana Corporation,
Plaintiff-Appellee,

versus

INTERNATIONAL ORGANIZATION OF MASTERS,
MATES & PILOTS, a Labor Organization,
Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida

[Filed Nov. 18, 1985]

ORDER:

( ) The motion of MARINE TRANSPORT LINES & DELTA STEAMSHIP LINES for ☒ stay ☐ recall and stay of the issuance of the mandate pending petition for writ of certiorari is DENIED.

(✓) The motion of MARINE TRANSPORT LINES & DELTA STEAMSHIP LINES for ☒ stay ☐ recall and stay of the issuance of the mandate pending petition for writ of certiorari is GRANTED to and including 12/16/85, the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within the period above mentioned there shall be filed with the Clerk of this Court the certificate of the Clerk of the Supreme Court that the certiorari petition has been filed. The Clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of the stay granted herein, unless the above mentioned certificate shall be filed with the Clerk of this Court within that time.

( ) The motion of _____ for a further stay of the issuance of the mandate is GRANTED to and including _____, under the same conditions as set forth in the preceding paragraph.

( ) IT IS ORDERED that the motion of _____ for a further stay of the issuance of the mandate is DENIED

/s/ John Godbold
United States Circuit Judge

Supreme Court, U.S.
FILED
MAR 17 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-1042

IN THE
Supreme Court of the United States
OCTOBER TERM, 1985

MARINE TRANSPORT LINES, INC.,
Petitioner.

v.

THE INTERNATIONAL ORGANIZATION OF MASTERS, MATES & PILOTS,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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BRIEF IN OPPOSITION

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QUESTION PRESENTED

As explained *infra*, pp. 7-8, none of the "Questions Presented" as stated at p. i of the petition is presented. The only question that *could* be presented—and petitioner has chosen not to present it—is the following:

> Did the Court of Appeals err in the only holding it made: that the fact-finding requirements of Section 7 of the Norris-LaGuardia Act, 29 U.S.C. § 107, are applicable to a request to enjoin a union from filing additional actions in other courts involving claims for unpaid wages owed to its members under a collective bargaining agreement.

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BRIEF IN OPPOSITION

REPORT OF OPINION BELOW

The opinion of the Court of Appeals for the Eleventh Circuit has been reported at 770 F.2d 1526 (11th Cir. 1985). The Order of the United States District Court for the Middle District of Florida, has not been reported, but appears in the Petitioner's Appendix.[1]

JURISDICTION

The judgment of the Court of Appeals, vacating the preliminary injunctions[2], and remanding the cases to the

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[1] References to Petitioner's Appendix will be designated "App." throughout this brief.

[2] A similar injunction was obtained in a separate action by Delta Steamship Lines, Inc., and Respondent's appeals from the injunctions in both cases were consolidated for argument and decision by the Court of Appeals (App. 2a). Delta has not sought review in this Court.

District Court, was entered on September 17, 1985. A Petition For Rehearing, or for Rehearing En Banc, by Marine Transport Lines was denied by the Court of Appeals on November 5, 1985. Petitioner invokes this Court's jurisdiction under 28 U.S.C. Sec. 1254(1).

STATUTORY PROVISIONS INVOLVED

Petitioner has correctly set forth some of the statutes involved in this proceeding, but has neglected to cite the specific provision of Norris-LaGuardia on which the decision of the Court of Appeals rests. Obviously, that provision is material to consideration of MTL's petition. Section 7 of the Norris-LaGuardia Act, 29 U.S.C. § 107, provides:

> No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as defined in this chapter, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—
>
> (a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;
>
> (b) That substantial and irreparable injury to complainant's property will follow;
>
> (c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

> (d) That complainant has no adequate remedy at law; and
>
> (e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

Petitioner has also neglected to include most of the applicable definitional provisions of the Norris-LaGuardia Act. Section 13 of the Act, 29 U.S.C. § 113, provides:

> When used in this chapter, and for the purposes of this chapter—
>
> (a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as defined in this section) of "persons participating or interested therein" (as defined in this section).
>
> (b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any

association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(d) The term "court of the United States" means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia.

STATEMENT OF THE CASE

The parties to this action were parties to a collective bargaining contract. That contract covered the unit of licensed deck officers employed aboard sea-going vessels operated by MTL. The contract provided for a wage increase effective June 16, 1983, with a cost of living increase (COLA) in December, 1983. The parties, on June 15, 1983, entered into a written Memorandum of Understanding deferring the wage increase, with MM&P retaining the right to reinstitute unilaterally and retroactively that deferred increased at any time, "as if [it] had not been deferred." The COLA increase was also deferred, on the same basis. On or about June 8, 1984, MM&P notified MTL that the deferred wage increases were reinstituted and that the wages were due.

By August 22, 1984, none of the reinstituted wage increases had been paid. On that day, twenty-two licensed deck officers brought an action for those unpaid wages against MTL in the federal district court in Tampa. Pursuant to traditional admiralty laws, they caused the

vessel upon which they had served[3] to be arrested, to impose a lien for their wages.[4] In addition to the unpaid wages, they also sought penalties under the provisions of the Seaman's Act, 46 U.S.C. § 10504. On August 23, 1984, nine other licensed deck officers who were or had been employed by MTL aboard a different vessel, filed a similar action for unpaid wages and penalties in the federal district court in Houston, and arrested the vessel upon which they had served. Both vessels were promptly bonded and released. In the Florida case MTL posted a bond of $55,000, and in the Texas case MTL posted a bond of $200,000.

On the morning of August 29, 1984, MTL filed the instant action against MM&P. Its Motion For Temporary Restraining Order alleged that the subject matter of the action was a labor dispute, and that MM&P was fostering the arrest of MTL vessels in an effort to force or require MTL to recognize MM&P as the bargaining representative of its supervisors.[5] The District Court orally granted the temporary restraining order that afternoon. The hearing was limited strictly to the Plaintiff's Complaint, Motion, and the argument of counsel. The Court set the matter down for hearing on preliminary injunction on September 6, denying MTL's Motion For Leave To Present Testimony. When the hearing on the Motion For Preliminary Injunction commenced, MTL renewed its Motion For Leave To Present Live Testimony, which the Court then granted.

After hearing the Petitioner's evidence, the Court granted the preliminary injunction requested. Although

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[3] Their periods of service aboard that vessel, during the period June 16, 1983 to June 16, 1984, varied from a few days to five months.

[4] Arresting vessels to secure the payment of seamen's wages has been a practice authorized under admiralty law since the beginning of the republic.

[5] The Motion alleged that MM&P was thereby committing an unfair labor practice under 29 U.S.C. § 158(b)(1)(B).

the Court may have "received evidence" arguably bearing on a number of points urged by MTL, it made no finding that either of the previous actions against MTL had been brought by MM&P. Nor did the Court find that, unless restrained, MM&P would bring any actions, much less that it would "continue its pattern of duplicative litigation" as asserted by MTL (Petition, at p. 6). Contrary to MTL's phrasing of its first question herein, the District Court did not find that "multiple and vexatious lawsuits" had been filed, nor that, unless enjoined, such lawsuits would be filed. Indeed, the Court's factual findings were sparse (App. 11a). Nonetheless, the Court issued a preliminary injunction forbidding MM&P from instituting additional actions in other courts seeking wages for its members who had served on other ships, declaring that it "sees no utility in filing additional lawsuits in other courts thereby causing the arrest of [MTL's] vessels." (App. 11a).

The District Court did not, and did not purport to, make the factual findings specified in Section 7 of the Norris-LaGuardia Act as prerequisites to the issuance of an injunction in a case "involving or growing out of a labor dispute." The District Court declared that the Norris-LaGuardia Act was wholly inapplicable because the parties' mutual perception that the case involved a "labor dispute" was incorrect (App. 9a). The Court reasoned, "this case is essentially nothing more than a dispute over a debt . . ." (App. 10a).

MM&P contended on appeal—as it had in the district court—that, since this case arose out of a labor dispute, Section 4(d) of the Norris-LaGuardia Act precluded issuance of the requested injunction, for that section forbids enjoining persons participating in a labor dispute from:

> "[b]y all lawful means aiding any person participating in or interested in any labor dispute who is being proceeded against in, or is prosecuting,

any action or suit in any court of the United States . . ."

In the alternative, MM&P contended that even if the injunction sought was not forbidden by § 4(d), it could not be issued without the court first making the findings prescribed in Section 7 of Norris-LaGuardia.

The Court of Appeals did not reach or decide the question whether the injunction was forbidden by § 4(d). Declaring that "[w]e need only reach one of MM&P's contentions," the Court of Appeals set aside the injunction because the District Court had failed to make the findings specified in Section 7 of Norris-LaGuardia (App. 4a-7a). During appellate argument, in response to a direct question from Judge Godbold, counsel for MTL had conceded that indeed this case "arose out of a labor dispute". Finding that the District Court's justification for ignoring Section 7 of Norris-LaGuardia—that the case did not arise out of a labor dispute—was erroneous as a matter of law, and that the District Court had failed to make the specific findings prescribed in that section as necessary to establish jurisdiction to enter an injunction, the Court of Appeals vacated the injunction and remanded the action. (App. 4a-7a).

REASONS FOR DENYING THE WRIT

None of the "Questions Presented" in the petition is presented in this case.

1. Contrary to the assertions in the petition, the court below did *not* hold that Norris-LaGuardia precluded issuance of an injunction in this case; it held only that the district court had failed to make the findings that are required by § 7 of Norris-LaGuardia for the issuance of such an injunction. The Court of Appeals declined to reach or decide respondent's contention that § 4 of Norris-LaGuardia forbids issuance of such an injunction. Thus, the first question is not presented.

2. Nor did the Court of Appeals even mention the All Writs Act, 28 U.S.C. § 1651(a), let alone address its

interrelationship with Norris-LaGuardia. The district court had not purported to base its preliminary injunction on the All Writs Act, and had not found that the exceptional circumstances necessary to justify invocation of the All Writs Act were present here. (The District Court's Order Granting Plaintiff's Motion For Preliminary Injunction, which contains its explanation for granting that injunction, appears at App. 8a-12a). Accordingly, the second question is not presented.

3. Nor did the Court of Appeals disregard any findings of fact by the District Court. Its disagreement with the District Court was over the legal question whether this action involves or grows out of a "labor dispute" so that the fact-finding requirements of § 7 of Norris-LaGuardia are applicable. Thus, the third quesion is not presented.

All that the Court of Appeals decided is that § 7 of Norris-LaGuardia is applicable, and requires, as a jurisdictional prerequisite to the issuance of an injunction, certain fact-findings that the district court had not made. Petitioner does not seek review of that holding, indeed does not cite § 7 anywhere in its petition or even acknowledge that that is what the Court of Appeals decided.

Moreover, this litigation may well be moot.

A. Introduction

Despite the broad and expansive language urged by MTL in its Petition for Certiorari, the issue presented in this case is really quite narrow. The Court of Appeals vacated the District Court injunction because the District Court did not make specific factual findings required by § 7 of Norris-LaGuardia. The broader questions urged by MTL necessarily presuppose the establishment of a proper record and the making of proper findings. In their absence, the "Questions" it poses are not ripe for

decision, and they were not decided by the Court of Appeals.

The Court of Appeals' determination that § 7 of the Norris-LaGuardia Act is applicable here—a determination that petitioner does not challenge by its Questions Presented—is firmly grounded in the decisions of this Court. Contrary to MTL's concern, the Court of Appeals' decision does not leave District Courts "powerless." It *does* require them to make decisions based on the evidence and the findings, rather than acting arbitrarily and without record support.

Nor does this case require review because of some perceived inconsistency with the interpretation of federal statutes. MTL conceded below, in its initial moving papers, and again in appellate argument, that this case arose out of a labor dispute within the meaning of the Norris-LaGuardia Act. Its effort to create a factual issue demonstrates how far it has to stretch to create even the appearance of conflict. This Court has broadly defined "labor dispute", and it is plain that a "labor dispute" was involved in this case, at least as the pleadings were drawn and the issue presented to the District Court and the Court of Appeals. The District Court simply avoided Norris-LaGuardia by means of a curious rationale which even MTL can neither explain nor support [6], and made no findings sufficient to support any injunction, much less one that meets the requirements of § 7 of Norris-LaGuardia.

Finally, this dispute would appear to be substantially moot. As noted, the Court of Appeals did not rule out the possibility of injunctive relief, if the need and the basis for such could be shown. It simply reversed a District Court decision which did not make any of the required findings. Should MTL feel that it still requires injunctive relief of this sort, it may return to the District Court, and if it can make the required showing, obtain

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[6] See Petition, p. 18 n.6.

the required findings. Should MTL choose to litigate the broader issues, it must necessarily establish a foundation upon which that argument can rest.

We suspect, however, that MTL will neither need to, nor be able to, make the required showing and obtain the desired findings. In the year and a half which has passed since the injunction was entered, MTL has had more than ample opportunity to pay the wages which it has conceded are owed. If it has done so, then the need for injunctive relief would appear to have vanished. Moreover, during the pendency of this appeal, Congress has repealed the provision for penalty wages applicable to coastwise voyages. Assuming that this retroactive application is upheld, MTL is in little danger of actions seeking penalty wages, or the need to post substantial bonds.[7] Nor has MTL indicated that any other suits have been filed, by any other person. If such a real danger existed, and if MTL were faced with the serious and substantial harm which it asserts as a result of the Court of Appeals decision, it would be in a position to make the appropriate showing to the District Court. Unless and until MTL makes such a showing, there is no need to add to this Court's already overburdened case load.

Accordingly, this Court should deny the Petition For Certiorari.

B. The Court of Appeals correctly determined that the fact-finding requirements of Section 7 of the Norris-LaGuardia Act are applicable to this case

In its Petition For Certiorari, MTL contends strongly that this case does not involve or grow out of a labor dispute. Its first motion for injunctive relief in the District Court, however, begins:

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[7] The District Court has required MTL to file an affidavit on a monthly basis showing its "unencumbered assets" and those have routinely reflected assets in excess of $75 million, currently in excess of $80 million.

> This action arises out of a labor dispute between Plaintiff Marine Transport, Inc. (hereinafter "MTL"), an employer, and Defendant International Organization of Masters, Mates and Pilots (hereinafter "MM&P"), a labor organization.

In its presentations to the District Court, MTL did not dispute that this was a labor dispute, and the District Court's Order reflects that both parties "have addressed this case as a labor dispute" (App. 9a). In argument before the Court of Appeals, in response to a direct and specific question, counsel for MTL conceded that indeed this case did arise out of a labor dispute.

As this Court recently observed in *Jacksonville Bulk Terminals v. International Longshoremans Association*, 457 U.S. 702 (1982), broad scope should be given to the application of Norris-LaGuardia, particularly in determining whether the action constitutes a "case involving or growing out of any labor dispute":

> Our decisions have recognized that the term "labor dispute" must not be narrowly construed because the statutory definition itself is extremely broad and because Congress deliberately included a broad definition to over-rule judicial decisions that had unduly restricted the Clayton Act's labor exemption from the anti-trust laws. For example in *Marine Cooks & Stewards v. Panama S.S. Co.*, 362 U.S. 365, 369, 4 L.Ed.2d 797, 80 S.Ct. 779 (1960), the court observed:
>
> > "Th[e] Act's language is broad. The language is broad because *Congress was intent upon taking the federal courts out of the labor injunction business* except in the very limited circumstances left open for federal jurisdiction under the Norris-LaGuardia Act . . ."

Jacksonville Bulk Terminals, supra, 457 U.S. at 711-12 (emphasis added).

Although MTL contends that the District Court found that there was no dispute between the parties as to the

applicable terms and conditions of employment, the District Court did *not* make such finding. It found that the parties agreed that MTL owed the seamen money, that the amount that was owed was likely very much in dispute (App. 10a), and that MTL had not paid it (*id.*). The Court of Appeals correctly observed:

> [A] "controversy concerning a term or condition of employment" need not concern whether to create such a term but can simply concern the enforcement of an extant term. [App. 5a].

The Court of Appeals went on to observe:

> Indeed a dispute is no less a controversy concerning a term of employment because it "may be resolved or determined on its merits by reference to the terms of a collective bargaining agreement". *United Electrical Radio and Machine Workers of America v. General Electric Co.*, 233 F.2d 85, 90-91 (1st Cir. 1956), aff'd on other grounds, 353 U.S. 547, 77 S.Ct. 921, 1 L.Ed.2d 1028 (1957); *W.L. Meade, Inc. v. Int'l Brotherhood of Teamsters*, 217 F.2d 6, 8 (1st Cir. 1954), or because the court has decided the dispute by way of a declaratory judgment (which one party has refused to obey). *Alcoa S.S. Co. v. McMahon*, 173 F.2d 567, 568 (2d Cir. 1949. [App. 6a].

In other words, since the obligation to pay the wages, and the determination of the amount of wages due, arise out of the collective bargaining agreement, the fact that one party admits that *some* wages are due does not preclude the controversy being in the nature of one "arising out of a labor dispute". Even accepting MTL's version of the "factual" finding of the District Court (which we believe the Court of Appeals did), this was a "labor dispute" as a matter of law.

Since this was clearly a case which should be "held to involve or to grow out of" a labor dispute, the provisions of Norris-LaGuardia apply. Primarily these involve the absolute prohibition of Section 4(d) against enjoining

assisting in litigation, and also the requirement of Section 7 for specific findings. The Court of Appeals found that the District Court had failed to make the fact-findings required by Section 7, and did not address or decide the application of § 4(d).

MTL contends that the All Writs Act gives the District Court jurisdiction to enter injunctive relief. But the All Writs Act would be applicable only if certain exceptional circumstances were present, and the district court, which did not cite the All Writs Act, made no finding that such circumstances existed here, indeed recognized that these were valid suits for wages that were in fact owed.[8] Rather, the district court regarded itself as issuing an ordinary preliminary injunction, and applied the quite different standards applicable to such an injunction (App. 10a-11a). In any event, MTL has suggested no reason why the fact-finding requirements of § 7 of the Norris-LaGuardia Act should not be applicable to labor injunctions sought under the All Writs Act, nor has it cited a single case that has ever so held.

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[8] MTL asserts, in its Petition (at 10), that an injunction can issue under the All Writs Act where the litigant has engaged in a pattern of vexatious and harassing litigation, *and* where the litigation has imposed a burden on the court system, *and* where it appears that the pattern of vexatious litigation will continue. The District Court made no findings that MM&P has engaged in any litigation, much less that it was vexatious and harassing (or even that the suits filed by the individual seamen were vexatious and harassing). Indeed, suits by seamen for unpaid wages, and arrest of their vessel as security for payment, have been their traditional means of collection throughout our Nation's history. And as the District Court here recognized, the claims were valid: MTL owed wages to its seamen. There was no finding that the litigation had already imposed any burden on the judicial system. Nor did the court make any finding that additional lawsuits were likely to be filed. It simply observed that "the court sees no utility in filing additional lawsuits in other courts thereby causing the arrest of the plaintiff's vessels." (App. 11a).

C. The Court of Appeals correctly found that the District Court made none of the findings required to establish its jurisdiction

Since the Norris-LaGuardia Act applies, it follows that the fact-finding requirements of Section 7 must be met. The District Court made no such findings, and the Court of Appeals correctly vacated the injunction because of the absence of such findings. Contrary to what MTL contends or believes, the District Court did not find that any unlawful acts had occurred, or that unless restrained they would occur, and did not even find that the previous arrests had been effected or caused by MM&P.[9] Nor did it find that there would be substantial and irreparable injury, that the injury to petitioner from denial of an injunction would outweigh that to respondent from its issuance, that complainant had no adequate remedy at law, or that public officers were unable or unwilling to protect complainant's property.

Although MTL now contends that the District Court injunction is carefully limited, and does not preclude MM&P from assisting its members in other actions, MTL attempted to persuade the District Court to stop suits against it, and the District Court indicated that its intention was to prevent the filing of further suits. However, MTL never proved, and the District Court never found, that MM&P had filed any of the other actions, or that unless restrained further actions were likely to occur. In another context, this Court, addressing the question of irreparable injury, or the likelihood of future occurrences, furnished this colorful explanation of the applicable principle:

> "Our Brother Harlan appears to concede that the State Bar has neither alleged nor proved that the Union has engaged in the past, is presently engaging, or plans to engage, in the sharing of legal fees.

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[9] *Cf. O'Shea v. Littleton*, 412 U.S. 488, 502 (1974), cited with approval in *City of Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983).

> Nonetheless, he suggests that the injunction against such conduct is justified in order to remove any "temptations" for the Union to participate in such activities. We cannot accept this novel concept of equity jurisdiction that would open the courts to claims for injunctions against "temptation" and would deem potential "temptation" to be a sufficient basis for the issuance of an injunction. Indeed, it would appear that jurisdiction over "temptation" has heretofore been reserved to the churches.
>
> An injunction can issue only after the plaintiff has established that the conduct sought to be enjoined is illegal and that the defendant, if not enjoined, would engage in such conduct."

United Transportation Union v. The State Bar of Michigan, 401 U.S. 576, 583-4 (1971).

The District Court did not even make the findings that would be required to support a preliminary injunction *not* governed by Norris-LaGuardia. In its Order, the District Court listed the four criteria established by the Eleventh Circuit for the issuance of preliminary injunctions,[10] but then failed to find that any of those criteria had been met. (App. 10a-11a). At appellate argument, the Court of Appeals expressed incredulity that the injunction could have been issued in the absence of a showing 1) that action had occurred or was likely to occur absent injunction, 2) that the action was caused by or would be caused by the party to be enjoined, 3) that the action sought to be enjoined was unlawful or improper, and 4) that the movant would suffer irreparable injury and had no adequate remedy at law. Despite all of MTL's hyperbole, there is simply no record basis for this Court to conclude that the proper basis for any injunction has been established, much less an injunction unsupported by the particularized findings required by § 7 of the Norris-LaGuardia Act.

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[10] *United States v. Jefferson County*, 720 F.2d 1151 (11th Cir. 1983).

D. This case may be moot

Despite the calamity projected by MTL, there is no substantial issue presented at this time. During the intervening year and a half, MTL has likely paid most, if not all, of the unpaid wages, or at least had more than ample opportunity to do so. Coupled with the retroactive repeal of the penalty wage statute applicable to coastwise vessels, it is hardly likely that MTL will be barraged by a plethora of lawsuits and vessel arrests. Even assuming, arguendo, that such might occur, MTL has ample recourse to the particular court in which the action is filed, or even to the District Court below, to make out a proper case for relief. There is simply no need for this Court to now consider an issue which has not arisen, and which indeed may not arise.

CONCLUSION

Since the underlying dispute over the payment of retroactive wages was properly held "to involve or to grow out of" a labor dispute, Section 7 of the Norris-LaGuardia applied. The Court of Appeals correctly determined that the District Court had failed to make necessary findings to establish its jurisdiction and properly vacated the injunction. MTL has shown no basis for this Court to reverse.

This case simply does not present the issues stated in Petitioner's "Questions Presented," let alone an issue which is appropriate for consideration by this Court. The Petition For Certiorari should be denied.

Respectfully submitted,

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On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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REPLY BRIEF FOR PETITIONER

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

No. 85-1042

MARINE TRANSPORT LINES, INC.,
Petitioner,

v.

THE INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS, etc.,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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REPLY BRIEF FOR PETITIONER

ADDITIONAL REASONS FOR GRANTING THE WRIT

In its Brief in Opposition in this matter, Respondent, The International Organization of Masters, Mates & Pilots ("the MM&P") seeks to trivialize the issues raised by this case by denying that the Eleventh Circuit's decision interpreted the Norris-LaGuardia Act, 29 U.S.C. § 101 *et seq.* (1977), so as to limit the inherent power of the federal courts to issue injunctions in aid of their jurisdiction. MM&P also suggests that the issue before this Court may be moot because Marine Transport Lines,

Inc. ("MTL") has likely paid most, if not all, of the unpaid wages. Brief in Opposition at p. 16. Petitioner suggests that neither of these arguments should distract this Court from the real and continuing conflict between the inherent power of the federal courts and the limitations on jurisdiction contained in the Norris-LaGuardia Act.

I. The Eleventh Circuit's Decision Interprets The Norris-LaGuardia Act So As To Limit The Inherent Power Of The Federal Courts To Issue Injunctions In Aid Of Their Jurisdiction.

The Eleventh Circuit undeniably held that the injunction issued by the district court below had to be vacated because the district court failed to make findings of "unlawful conduct" as required by Section 7(a) of the Norris-LaGuardia Act, 29 U.S.C. § 107(a). The Court of Appeals' holding, however, necessarily subsumed a determination that the Norris-LaGuardia Act places a limitation on the inherent power of the federal courts to act in aid of their jurisdiction. The district court was presented with evidence, and specifically found, that the MM&P precipitated the filing of two arrest actions against MTL. *See* Appendix at p. 9a ("Defendant has filed wage penalty suits resulting in the arrest of two of Plaintiff's ships . . . .")[1] Moreover, the district court found that there was "no utility" in allowing the MM&P to file additional lawsuits in other courts, given that the district court could provide the MM&P complete relief and that the filing of additional actions would have resulted in irreparable injury to Petitioner's business. *Id.* at 11a. In short, the injunction issued by the district court was at least implicitly designed to control that court's docket and prevent abuse of the judicial system.

In this context, the Eleventh Circuit's focus on the absence of a finding of unlawful conduct as required by

[1] All citations to the "Appendix" refer to the Appendix contained in MTL's Petition for a Writ of Certiorari.

Section 7(a) of the Norris-LaGuardia Act imposes a restriction on the power of the federal courts which is unreasonable and leaves the federal courts powerless to control their dockets in any action involving a labor dispute. In effect, the Eleventh Circuit's decision requires a district court to find "violence, intimidation, threats, vandalism, breaches of the peace or criminal acts" prior to issuing an injunction that does nothing more than provide the court with an opportunity to perform efficiently its judicial function. *See United States v. United Mine Workers of America*, 330 U.S. 258, 309 (1947) (Frankfurter, J., concurring). Viewed in this light, it is clear that the case presents the question of whether a proper accommodation of the Norris-LaGuardia Act and the inherent power of the federal courts requires a relaxation of the provisions of Section 7 of the Norris-LaGuardia Act.

There is substantial precedent indicating that the requirements in Section 7 can be relaxed as part of the accommodation between the Norris-LaGuardia Act and another federal statute. For example, in *Boys Markets, Inc. v. Retail Clerks Union, Local 770*, 398 U.S. 235 (1970), this Court found that the conflicting policies of various labor statutes required accommodation to one another. After performing this process of accommodation, this Court permitted the issuance of an injunction to enforce a no-strike clause in a collective bargaining agreement. Obviously, a strike in violation of a collective bargaining agreement is not "unlawful conduct" within the meaning of Section 7 of the Norris-LaGuardia Act and, yet, this Court allowed injunctive relief to be granted. In short, this Court implicitly recognized that the process of accommodation between the Norris-LaGuardia Act and Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185 (1977), required a relaxation of some of the requirements in Section 7 of the Norris-LaGuardia Act.

Similarly, in *Local 553, Transport Workers Union v. Eastern Air Lines*, 695 F.2d 668 (2d Cir. 1982), the Second Circuit recognized that the accommodation of the Norris-LaGuardia Act and the Railway Labor Act required the relaxation of certain of the requirements in Section 7 of the Norris-LaGuardia Act. In that case, the Second Circuit approved a district court injunction which prohibited the employer from assigning nonunion flight attendants to work on certain newly acquired routes in South America. The district court enjoined the assignment of routes to nonunion employees on the theory that the assignments created a "major dispute" under the Railway Labor Act. On appeal, the employer argued that the injunction did not comply with the Norris-LaGuardia Act because the district court failed to find that "as to each item of relief granted greater injury will be inflicted upon the complainant by the denial of relief than will be inflicted upon defendants by the granting of relief." *Id.* at 687 (quoting 29 U.S.C. § 107(c)). In rejecting this argument, the Second Circuit stated:

> We agree with the District Court that Section 7(c) should not apply to injunctions designed to preserve the status quo during major disputes. In a major dispute, the status quo provisions are 'central to the RLA's design.' The RLA sets up an elaborate procedure designed to induce both parties to a labor dispute to resolve their differences peacefully and voluntarily. Only if both sides are required to maintain the status quo during the pendency of these procedures can the machinery provided in the Act promote the labor peace that the framers desired. It is for this reason that courts have considered the status quo obligations imposed by the RLA to be 'mandatory.' Applying the equitable considerations of Section 7(c) of the Norris-LaGuardia Act in this case would be inconsistent with the mandatory maintenance of the status quo during major disputes that the RLA requires.

Id. at 678-79 (footnotes and citations omitted).

In short, the Eleventh Circuit's strict application of the requirements in Section 7 of the Norris-LaGuardia Act necessarily raises the question of how the inherent power of the federal courts to issue injunctions in aid of their jurisdiction should be accommodated to the limitations on jurisdiction contained in the Norris-LaGuardia Act.

II. The Dispute Underlying This Litigation Is Not Moot.

With respect to the issue of mootness, the MMP's contention is untenable and contrary to the recent findings of the district court in *Stuart v. Steamship M/V Marie Duval*, No. 84-1136-Civ-T-17 (M.D. Fla. March 6, 1986). Supplemental Appendix, p. SA-1. *Stuart* v. *Steamship M/V Marie Duval* is one of the arrest actions against an MTL vessel precipitated by the MM&P. In that action, the district court recently heard and decided MTL's motion for summary judgment. The district court denied that motion as to count I of the complaint. The denial of the motion with respect to count I was based on the court's finding that there is a factual dispute as to whether MTL has paid all of the wages due MM&P members. As such, Respondent's contention of mootness is unfounded.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that a Writ of Certiorari be issued to review the judgment of the Court of Appeals for the Eleventh Circuit in this case.

Respectfully submitted,

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SUPPLEMENTAL APPENDIX

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

CASE NO. 84-1136-CIV-T-17

JOHN M. STUART, *et al.*,
Plaintiff(s),

VS.

STEAMSHIP M/V DUVAL, *etc.*, *et al.*,
Defendant(s).

ORDER ON MOTIONS FOR SUMMARY JUDGMENT AND TO DISMISS

THIS CAUSE is before the Court on Defendants' motion to dismiss, filed August 27, 1984, thereafter supplemented October 2, 1985, and interpreted as a motion for summary judgment. Also pending is Defendants' motion for summary judgment, filed September 3, 1985. Plaintiffs' opposition to these motions was received January 3, 1986. Oral argument was held January 30, 1986.

Defendants seek to dismiss Count II of the Complaint regarding Plaintiffs' claim for penalty wages pursuant to 42 U.S.C. §§ 10313 and 10504. Defendants maintain that Plaintiff has presented insufficient allegations to support a penalty payment pursuant to the above cited Code sections. Furthermore, Defendants maintain that the monies demanded in the complaint are for deferred wages and benefits, which were retroactively reinstated, and said deferred wages and benefits do not fall within the meaning and intent of 42 U.S.C. § 10313 and § 10504. Furthermore, Defendants posit that 42 U.S.C. § 10504's

exemption for coastwide commerce retroactively precludes this claim.

Defendants also seek summary judgment as to Count I of the complaint claiming that all amounts sought in a complaint have been paid. Material issues of fact as to whether Plaintiffs have been paid all the wages due them, precludes summary judgment.

The wages claimed do not fall within the penalty statute 46 U.S.C. § 10504, since the retroactive applicability of this statute exempts this coastwide voyage from penalty wage claims regarding § 10504. Count II, must be dismissed. Accordingly, it is

ORDERED that the Defendants' motion to dismiss/summary judgment regarding Count II claims pursuant to § 10504 is granted. The Defendants' motion for summary judgment regarding Count I is denied. This Order is *not* to be construed as one pursuant to Fed.R.Civ.P. 54(b).

DONE AND ORDERED in Chambers, in Tampa, Florida, this — day of March, 1986.

ELIZABETH A. KOVACHEVICH
United States District Judge

Copies to:

All Parties and Counsel of Record